IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 25216 of 2004

Between:

M/s Sree Vadivambigai Textile Mills Ltd., Sales Depot at Salipet, Tenali 522 201, Rep.by its Managing Director R.Subramanian Aged about 49 years, R/o Tamilnadu.

..... PETITIONER

AND

Asst. Commissioner (CT) Intelligence, Guntur Division.
Guntur

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari, calling for the records relating to the passing of the impugned assessment order and demand by the respondent in Rc.No.GNT/05/2/1919 dt. 06/12/2004 contrary to the contents of the show cause notice dt. 28/10/2004 and quash the same as illegal, arbitrary and without authority of law and contrary to the principles of natural justice.

Counsel for the Petitioner : MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent : SPL. STANDING COUNSEL FOR COMMERCIAL TAX

The Court made the following :

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ORDER: (per the Hon'ble Sri Justice M.H.S.Ansari)

The order, dated 18-01-2005, shows that the only grievance of the petitioner in the instant writ petition was with respect to the turnover of Rs.13,49,545/- pertaining to D.Ds. sent during the month of May 2004, referred to in the order of the assessing authority (Page No.35 of material papers). It was further recorded in the said order of 18-01-2005 that as the petitioner had efficacious remedy of appeal under Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") with respect to the order of assessment, we are inclined to consider the instant writ petition only with respect to the aforesaid sum of Rs.13,49,545/-. Learned Special Standing Counsel was requested to obtain instructions of his client as to whether a fresh show cause notice would be issued by the respondent-authority with respect to the said inclusion of Rs.13,49,545/-. The matter was adjourned for that purpose.

There was also a direction upon respondents not to take coercive steps for recovery of tax proportionate to the said impugned turnover of Rs.13,49,545/-.

Learned Special Standing Counsel today represented before us, upon instructions of his client, that there would be no objection to reconsider the matter by the assessing authority by issuing a fresh show cause notice with respect to the sum of Rs.13,49,545/-. Accordingly, the impugned order of assessment to the extent of inclusion of the aforesaid sum of Rs.13,49,545/- is concerned, the same is set aside on the ground of violation of principles of natural justice with a consequential direction upon the respondent-authority to issue a fresh show cause notice for inclusion of the said amount and to pass orders after affording the petitioner an opportunity of being heard.

With regard to other contentions raised assailing the impugned assessment order, dated 06-12-2004, is concerned, we are not inclined to consider the same as already noticed, for the reason that appeal lies under Section 19 of the Act and it is

open to the petitioner to avail such remedy of appeal, if so advised.

The writ petition is accordingly disposed of with the direction and observation as above.

As requested by the learned counsel for the petitioner, the original order of assessment shall be returned forthwith to the petitioner, by the Registry.

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(M.H.S.ANSARI,J)

Dated:25-01-2005

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(T.CH.SURYA RAO,J)

GJ

To

1. The Assistant Commissioner (CT) Intelligence, Guntur Division.
   Guntur.

2. Two C.Cs. to the Spl. Standing Counsel for Commercial Tax, High Court of A.P., Hyderabad. (OUT)

3. Two C.D. copies.

4. The Scrutiny Officer, E.R.Section, High Court of A.P., Hyderabad.